

## REMARKS/ARGUMENTS

The above-identified patent application has been reviewed in light of the Examiner's Action dated December 21, 2006. Claims 23, 26 and 30 have been amended and Claims 1-11, 13 and 14 were previously withdrawn. Accordingly, Claims 12 and 15-39 are now pending. The Examiner has objected to Claims 17, 18, 20, 26, 31, 33 and 37 as lacking description in the specification. Claim 26 has been rejected under 35 U.S.C. § 112 as being indistinct. Claims 20-23 and 33-37 have been rejected under 35 USC § 102(e) as being anticipated by U.S. Patent No. 6,618,875 to Oropallo et al. ("Oropallo"). Claims 20-22, 26-30 and 33-36 have been rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. 5,350,266 to Espey et al. ("Espey"). Claims 20-22 and 33-36 have been rejected under 35 USC § 102(b) as being anticipated by U.S. Patent No. DE 1,163,257 to Gebert ("Gerbert"). Claims 23-25 and 37-39 have been rejected under 35 USC § 103(a) as being obvious in light of Oropallo in view of U.S. Patent No. 6,192,531 to Fritz et al. ("Fritz"). Claims 12, 15-18 and 26-31 have been rejected under 35 USC § 103(a) as being obvious in light of Oropallo in view of Lewis. Claims 18, 19, 31 and 32 have been rejected under 35 USC § 103(a) as being obvious in light of Oropallo in view of Lewis and further in view of Fritz. Claims 23-25 and 37-39 have been rejected under 35 USC § 103(a) as being unpatentable over Gerbert and Fritz. Claims 12, 15-17 and 26-30 have been rejected under 35 USC § 103(a) as being unpatentable over Gebert and Lewis. Finally, Claims 18, 19, 31 and 32 have been rejected under 35 USC § 103(a) as being obvious in light of a combination of Gerbert, Lewis and Fritz.

### **Claim Rejections - 35 U.S.C. § 112**

Claim 26 has been rejected as being indefinite. Claim 26 has been amended to now claim that the overflow assembly is "adapted to" be used with a bathtub, thereby indicating that the bathtub is not part of the claimed structure. Thus withdrawal of the rejection is respectfully requested.

### **Claim Rejections - 35 U.S.C. § 102(e) - Oropallo**

Claims 20-23 and 33-37 have been rejected as being anticipated by Oropallo. Withdrawal of this rejection is respectfully requested in light of the Declaration pursuant to 37 C.F.R. §1.131 that is filed herewith. More specifically, Applicant has reasonably proved that the present invention

enjoys a date of conception that predates the filing date of Oropallo, thereby removing Oropallo as a prior art reference.

#### **Claim Rejections - 35 U.S.C. § 102(b) - Espey**

Claims 20-22, 26-30 and 33-36 have been rejected as being anticipated by Espey. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Applicant directs the Examiner's attention to the arguments set forth in an Appeal brief filed in conjunction with the above-identified application on November 18, 2005. As succinctly stated therein, Espey teaches that the cap of Espey is pressed downwardly over a nut 20 in such a way that projections 52 are received in respective slots 32 on the side faces of the nut 20. As Espey's cap is moved further, ramps 53 of the projections 52 engage bridge portions 34 to flex sidewalls 41-46 radially outward to permit the projections to move across the respective bridge. Once the projections have moved in an axial direction sufficient to clear the bridge, the walls flex inwardly to bring the inward end faces 54 of the projections in tight contact with the end wall 36 of the respective second slot 33 (Espey column 3, lines 31-43).

There is no teaching that the "lugs" 21-26 of Espey, "frictionally detachably engage" the inner surface of a cap. Rather, Espey's cap is fitted to the nut by pressing downwardly such that the projections 52 snap into slots 33. Such an arrangement is not frictionally detachable and removal of the cap would require a tool of some sort of tool to pry the projections from the slot 33. Since each and every element set forth in Claims 20, 26 and 33 are not found in Espey, withdrawal of the rejection is respectfully requested. It is also requested that the rejections to Claims 21, 22, 27-30 and 34-36 also be withdrawn since these claims depend on an allowable claim. These statements should be persuasive since upon review of the file history it will be seen that after such statements were previously made the application was allowed.

#### **Claim Rejections - 35 U.S.C. § 102(b) - Gebert**

Claims 20-22 and 33-36 have been rejected as being anticipated by Gebert. Independent Claims 20 and 33, as outlined above, both require a fastening member, such as a nut, that includes

at least one protrusion (e.g. lug) extending therefrom for frictionally detachably engagement with an inner surface of a flange on a cap. Alternatively, Gebert appears to disclose a plate positioned on the inner surface of the tub that receives the cap. In addition, it does not appear that the plate of Gebert possesses the required protrusions to engage the cap as required by Claim 20. At least for these reasons, it is respectfully requested that the rejections to Claims 20 and 33, and their dependants, Claims 21, 22 and 34-36 be withdrawn.

**Claim Rejections - 35 U.S.C. § 103(a) - Oropallo and Fritz**

Claims 23-25 and 37-39 have been rejected as being obvious in light of a combination of Oropallo and Fritz. As outlined above, Oropallo is not prior art that can be combined with Fritz to support this rejection. Accordingly, withdrawal of the rejection to Claims 23-25 and 37-39 is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a) - Oropallo and Lewis**

Claims 12, 15-18 and 26-31 have been rejected as being obvious in light of a combination of Oropallo and Lewis. As outlined above, Oropallo is not prior art that can be combined with Lewis to support this rejection. Accordingly, withdrawal of the rejection to Claims 12, 15-18 and 26-31 is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a) - Oropallo, Lewis and Fritz**

Claims 18, 19, 31 and 32 have been rejected as being obvious in light of a combination of Oropallo, Lewis and Fritz. As outlined above, Oropallo is not prior art that can be combined with Lewis and Fritz to support this rejection. Accordingly, withdrawal of the rejection to Claims 18, 19, 31 and 32 is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a) - Gebert and Fritz**

Claims 23-25 and 37-39 have been rejected as being obvious in light of a combination of Gerbert and Fritz. As outlined above, neither Gerbert or Fritz disclose a cap that frictionally engages

the lugs or protrusions of a fastening member or nut, as found in parent Claims 20 and 33. Accordingly, withdrawal of the rejection to Claims 23-25 and 37-39 is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a) - Gebert and Lewis**

Claims 12, 15-17 and 26-30 have been rejected as being obvious in light of a combination of Gerbert and Lewis. As outlined above, neither Gerbert or Lewis disclose a cap that frictionally engages the lugs or protrusions of a fastening member or nut, as found in parent Claims 12 and 26. Accordingly, withdrawal of the rejections to Claims 12, 15-17 and 26-30 is respectfully requested.

**Claim Rejections - 35 U.S.C. § 103(a) - Gebert, Lewis and Fritz**

Claims 18, 19, 31 and 32 have been rejected as being obvious in light of a combination of Gerbert, Lewis and Fritz. As outlined above, neither Gerbert, Lewis or Fritz disclose a cap that frictionally engages the lugs or protrusions of a fastening member or nut, as found in parent Claims 12 and 26. Accordingly, withdrawal of the rejections to Claims 18, 19, 31 and 32 is respectfully requested.

**Conclusion**

Based upon at least the foregoing, Applicant believes that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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